

BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JONATHAN KLINGBEIL
5661 Wendy Way
Oroville, CA 95969

Physical Therapy License No. PT 5223

Respondent.

Case No. 1D-2001-62744

OAH No. N2005020191

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on May 16, 2005, in Sacramento, California.

Robert C. Miller, Deputy Attorney General represented complainant.

Jonathan Klingbeil appeared on his own behalf.

The case was submitted for decision on May 16, 2005.

FACTUAL FINDINGS

1. Complainant Steven K. Hartzell is the Executive Officer of the Physical Therapy Board of California (Board). He brought the Accusation in his official capacity.

2. On February 9, 1970, the Board issued Physical Therapy License Number PT-5223 to Jonathan Klingbeil (respondent). The Physical Therapy License was in full force and effect at all times pertinent to this case. It will expire on December 31, 2005, unless renewed.

3. On January 29, 1996, in the Butte County Municipal Court, case number SP03996, respondent pled no contest to a violation of Vehicle Code section 23152, subdivision (b), driving a motor vehicle with a blood alcohol in excess of .08 percent. This is

a crime that is substantially related to the qualifications, functions or duties of a physical therapist. The circumstances underlying respondent's conviction are that on November 15, 1995, he was returning from a birthday party in Chico when he made an improper lane change. He was stopped and cited for driving under the influence of alcohol.

Respondent was placed on summary probation for three years, the terms of which included payment of a \$1,240.00 fine, 48 hours in jail, attendance/completion of a Level I driving under the influence (DUI) program and other standard terms of probation. Respondent satisfactorily completed his probation.

4. On May 23, 2002, in the Butte County Superior Court, respondent pled no contest to a violation of Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level in excess of .08 percent. Respondent entered two pleas relating to separate incidents occurring on February 26, 2000, and on May 18, 2002. The circumstances underlying the February 26, 2000 incident are that respondent had been drinking and had a designated driver drop him off at Paradise Cinema where his car was parked. Respondent called his son and daughter and asked them to come and take him home. Respondent avers that he was cold and turned the car on to operate the heater. He then fell asleep. The theatre manager observed him and contacted police, who arrived and arrested him. Respondent believes the situation was a "little unjust" given that his children were available to drive him home.

The May 18, 2002 incident occurred while the second DUI case was pending. Respondent was returning from a band concert in Paradise, California. He was stopped and cited for DUI within miles of his residence. He avers that there was no other traffic in the area at the time.

Respondent was sentenced to 14 days in the county jail and placed on 60 months' probation. He was ordered to pay fines and restitution fees totaling \$1,520.00, complete a DUI program, attend 3 Alcoholics Anonymous (AA) meetings per week, have restricted driving privileges for 18 months, totally abstain from alcohol, and comply with other standard terms of probation.

5. Respondent completed the 18-month DUI program ordered by the Superior Court, and also attended the required AA meetings. He was allowed to complete his jail sentence through a work program, serving as a janitor for an adult day health care program in Paradise. He also helped run a thrift store operated by the same program. He avers that he has not consumed any alcohol over the past three years.

Respondent has two children – a son, age 22, and a daughter, age 20. Their family has suffered a series of major setbacks. His wife, and their mother, died in a vehicle accident 11 years ago and he has since raised them as a single parent. The children suffered serious personal injury in that same accident. Four years ago their home and everything they owned were lost in the "Poe" Yankee Hill forest fire above Highway 70 in Paradise. At that time, respondent was also providing full-time care to his ailing mother and had helped to maintain

her in her home over a five year period up until the time of her passing in December 2003. Respondent's daughter is now married. His son continues to reside at home while working full time.

6. Respondent notes that he is in full compliance with the terms of his criminal probation. He has two years remaining. On his own volition he continues to attend AA meetings, twice a week on average. He attends different group meetings around Paradise and elsewhere. He characterizes himself as a "recovering alcoholic," a term he uses to describe one who needs to deal with stress and life situations in ways other than stooping to the use of alcohol. Prior to his most recent conviction, he avers that he was a weekend drinker but not to the point of overt drunkenness. He denies ever being under the influence while working as a physical therapist. He notes that he has competently practiced 35 years as a physical therapist without any complaints or action taken against his license. Over this entire period he adds that he missed no work and did not allow anything to affect his job performance or his commitment to delivering quality care to his patients.

Respondent's current recovery program revolves around AA meetings and church attendance. He has no AA sponsor and he is not a sponsor himself. He also has yet to work through the 12 steps of the AA program. Although he accepts important elements of the program, such as accepting that he has problem and depending upon a higher power, he chooses not to adhere to other elements that he does not believe apply to him. Respondent attends church and notes that this helps him cope with other issues and needs in his life.

7. Respondent has been employed by SunDance Rehabilitation since May 1997, full time since September 2003. He works out of SunBridge Care Center in Willows, California. He provides a number of services for this and other long term care facilities under contract with SunDance Rehabilitation. Mike Milne is the Regional Director of Operations for SunDance Rehabilitation. He characterizes respondent as a dedicated employee and therapist who has demonstrated "a great deal of patience, compassion and empathy" in his work with the geriatric population. He appreciates respondent's willingness to help out other facilities and therapists as the need arises, and notes that respondent truly regrets the events leading up to this matter.

Tina Brey is the Administrator of Sunbridge Care Center. She confirms that no complaints have been received about his work. She describes him as a caring, compassionate and honest employee. Ms. Brey believes respondent "is sincere in his professional career and has done everything he can to demonstrate personal changes to prevent any future incidents."

8. Respondent views work as a physical therapist as his only livelihood and marketable skill. He is willing to be placed on probation so that he can continue to work and earn a living.

Respondent's multiple DUI convictions are matters of serious concern to the Board, particularly when the most recent offense occurred at a time when respondent had a second

DUI pending. However, respondent now appears to have taken his DUI offenses seriously. He was forced by the Superior Court to deal with his problems related to alcohol. He completed the 18-month DUI program and, on his own volition, has continued in the AA program. Respondent represents that he continues to abstain from drinking. He is in full compliance with all the terms and conditions of his probation and he will remain on criminal probation for two more years. Complainant recommends that respondent be further evaluated to see if he has a propensity to abuse alcohol and whether he requires a course of treatment to ensure safe practice as a physical therapist. With inclusion of this recommendation as a condition of probation, it would not be contrary to the public interest for respondent to continue practicing physical therapy on probationary basis.

9. The Board has incurred the following costs in connection with its investigation and prosecution of this case:

<u>Fiscal Year</u>	<u>No. of Hours</u>	<u>Hourly Rate</u>	<u>Total Charges</u>
2002-03	20	\$112	\$2,240.00
2003-04	20	112	2,240.00
2003-04	2	132	264.00
2004-05	14	139	<u>1,946.00</u>
TOTAL			\$6,690.00

A certification of costs was submitted describing the tasks that were necessary for the prosecution of this matter. The procedural history of this case includes a default decision revoking respondent's license, effective September 3, 2004, and a subsequent order granting reconsideration. Given this history, the amount sought by the Board is not unreasonable.

Respondent is experiencing personal financial hardship. Although he works full time, a quarter of his gross income is levied to pay back taxes. His take home pay approximates \$1,300.00 every two weeks. Under these circumstances, adjustment of costs down to \$4,000.00 is appropriate, payment terms to be worked out between respondent and the Board.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 2239, the use of alcoholic beverages to the extent, or in such manner as to be dangerous or injurious to the licensee or others constitutes unprofessional conduct. Business and Professions Code section 2660, subdivision (d), further provides that conviction of a crime that is substantially related to the qualifications, functions or duties of a physical therapist is grounds for Board disciplinary action.

2. Cause for disciplinary action exists under Business and Professions Code sections 2239 and 2660, subdivision (d), by reason of the matters set forth in Findings 3 and 4. Respondent was convicted for offenses substantially related to the qualifications, functions or duties of a physical therapist. His actions also constituted unprofessional conduct.

3. Under Business and Professions Code section 2661.5, the Board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the Board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case. The Board has discretion to adjust the amount of costs. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) The matters set forth in Finding 9 have been considered in determining that the Board's investigation and prosecution costs in this case should be adjusted downward to \$4,000.00.

4. The matters set forth in Findings 4 through 8 were considered in making the following Order. It would not be contrary to the public interest or welfare to issue respondent a probationary license at this time.

ORDER

Physical Therapy License Number PT 5223 issued by the Physical Therapy Board to Jonathan Klingbeil is revoked. However, the revocation is stayed and respondent is placed on probation for four (4) years under the following terms and conditions:

1. Obey All Laws, Orders, Terms of Criminal Probation. Respondent shall obey all federal, state and local laws, and statutes and regulations governing the practice of physical therapy in California. Respondent shall be in compliance with any valid order of a court. Being found in contempt of any court may constitute a violation of probation. Respondent must not violate any terms and conditions of his criminal probation and be in compliance with any restitution ordered.
2. Psychological Evaluation and Treatment. Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed psychologist/psychiatrist, who shall furnish an evaluation report to the Board or its designee. Respondent shall pay the cost of the psychological evaluation. If respondent is required by the Board or its designee to undergo psychological treatment, respondent shall within 30 days of the requirement submit to the Board for its prior approval the name and qualifications of a psychologist/psychiatrist of respondent's choice. Respondent shall undergo and continue psychological treatment until further notice from the Board or its designee. Respondent shall have the treating psychologist/psychiatrist submit quarterly status reports to the Board or its designee indicating whether the respondent is capable of practicing physical therapy safely.

3. Quarterly Reports. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.
4. Probation Monitoring Program Compliance. Respondent shall comply with the Board's probation monitoring program.
5. Interview with the Board or its Designee. Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals and with reasonable notice.
6. Notification of Probationary Status to Employers. Respondent shall notify all present or future employers of the reason for and the terms and conditions of the probation by providing a copy of the accusation and the decision and order to the employer. Respondent shall obtain written confirmation from the employer that the documents were received. If respondent changes, or obtains additional employment, respondent shall provide the above notification to the employer and submit written employer confirmation to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.
7. Notification of Change of Name or Address. Respondent shall notify the Board, in writing, of any and all changes of name or address within ten days.
8. Restriction of Practice – Temporary Services Agencies. Respondent may only practice or perform physical therapy in a supervised structured environment. Respondent shall not work for a temporary services agency or registry.
9. Prohibited Use of Aliases. Respondent may not use aliases and shall be prohibited from using any name which is not his legally-recognized name or based upon a legal change of name.
10. Work of Less Than 20 Hours Per Week. If respondent works less than 192 hours in a period of three months, those months shall not be counted toward satisfaction of the probationary period. Respondent shall notify the Board if he works less than 192 hours in a three month period.
11. Tolling of Probation. The period of probation shall run only during the time respondent is practicing within the jurisdiction of California. If, during probation, respondent does not practice within the jurisdiction of California, respondent is required to immediately notify the probation monitor in writing of the date that respondent's practice is out of state, and the date of return, if any. Practice by respondent in California prior to notification to the Board of the respondents return will not be credited toward completion of probation. Any

order for payment of cost recovery shall remain in effect whether or not probation is tolled.

12. Cost Recovery. Respondent is ordered to reimburse the Board \$4,000.00 as its reasonable investigation and prosecution costs. Respondent and the Board may agree in writing to payment by an installment plan. Failure to make the ordered reimbursement, or any agreed upon payment, may constitute a violation of the probation order.
13. Violation of Probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
14. Cessation of Practice Due to Retirement, Health or Other Reasons. Following the effective date of this probation, if respondent ceases practicing physical therapy (or performing as a physical therapist assistant) due to retirement, health or other reasons respondent may request to surrender his license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, the terms and conditions of probation shall be tolled until such time as the license is no longer renewable, respondent makes application for the renewal of the tendered license or makes application for a new license.
15. Completion of Probation. Upon successful completion of probation, respondent's license shall be fully restored.

DATED: May 24, 2005.

Original Signed By: _____
JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

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Against:)
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Case #: 1D 2001 62744

OAH No.: N2005020191

The foregoing Proposed Decision, in case number 1D 2001 62744 , is hereby adopted by the Physical Therapy Board, Department of Consumer Affairs, State of California.

This decision shall become effective on the 18th day of July, 2005.

It is so ordered this June 16, 2005 .

Original Signed By: _____.
Donald A. Chu, P.T., President
Physical Therapy Board
of California